

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NABIL FARAG,

Petitioner,

v.

STATE OF WASHINGTON,

Respondent.

CASE NO. C12-5865 BHS

ORDER TO SHOW CAUSE AND
STRIKING MOTION

This matter comes before the Court on Petitioner Nabil Farag's ("Farag") motion for an extension of time (Dkt. 3).

On September 27, 2012, Farag filed a petition for writ of habeas corpus apparently contesting state court convictions from a case that was filed in 2006. Dkt. 1. On November 1, 2012, Farag filed a motion for extension of time requesting additional time to properly support his petition. Dkt. 3.

A petitioner must be in custody in order to challenge his detention. *See* 28 U.S.C. § 2254(a). Because custody is a statutory jurisdictional prerequisite, a district court may only consider a habeas petition if the petitioner was in custody at the time of filing of the

1 petition. *See Maleng v. Cook*, 490 U.S. 488, 490–91 (1989) (per curiam); *Bailey v. Hill*,
2 599 F.3d 976, 978–79 (9th Cir. 2010). As with other jurisdictional prerequisites, the
3 court must raise the issue of custody *sua sponte*. *See Tyars v. Finner*, 709 F.2d 1274,
4 1279 (9th Cir. 1983) (addressing issue of custody even though respondent did not raise
5 issue).

6 In this case, Farag does not appear to be in custody because his mailing address is
7 not a state correctional institution. Therefore, Farag is ordered to **SHOW CAUSE** that
8 he is in custody of the state. Farag must show cause, if any there is, no later than January
9 2, 2012. Failure to show that he is in custody will result in dismissal for lack of
10 jurisdiction.

11 If Farag shows that he is in custody, the Court will consider an extension of time
12 to properly support his petition. At this time, however, the Court finds that an extension
13 is not necessary. Therefore, the Clerk is directed to **STRIKE** Farag's motion.

14 **IT IS SO ORDERED.**

15 Dated this 3rd day of December, 2012.

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18 BENJAMIN H. SETTLE
19 United States District Judge
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